

REQUEST TO WITHDRAW FINALITY OF OFFICE ACTION

On July 27, 2009, a final Office action issued in the above-referenced application. In the final Office action, the Examiner allowed claims 1-10, 12, 13, 24, 25, 27-29, 31, 32, 37 and 38 and finally rejected claims 11, 26, 30, and 33-36. In response to the final Office action filed on November 10, 2009, Applicants canceled claims 11, 26, 30, and 33-36, without prejudice, i.e., Applicants canceled all the claims that were rejected by the Examiner and retained only those claims that were fully allowed.

Nevertheless, in the Advisory Action of 11/27/09, the Examiner entered a new ground of rejection under 35 USC 112, paragraph 2, as follows: "The alpha-crystal form of the methanesulfonic acid addition salt of 4-(4-methylpiperazin-1-ylmethyl)-N-[4-methyl-3-[4-pyridin-3-yl]pyrimidin-2-ylamino]phenyl]benzamide is not fully identified in all claims by the X-ray powder diffraction pattern. See, for example, claim 12. Absent such definition, the result of the process claim is not identified in accordance with 35 USC 112, paragraph 2."

Applicants respectfully submit that an Advisory Action is an improper vehicle for a new ground of rejection, especially since none of Applicants' amendments necessitated the new ground of rejection, and since the new ground of rejection was not based on information submitted in an information disclosure statement.

Applicants respectfully submit that in order for the Examiner to enter the new ground of rejection, the Examiner should kindly withdraw the finality of the Office action of July 27, 2009 and issue a new non-final Office action.

In light thereof, Applicants respectfully submit that the finality of the Office action of July 27, 2009 is premature, and request reconsideration and withdrawal of the finality of the rejection. See, MPEP §706.07(a).